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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 585 314 US 665

J. EDWARD JONES, PETITIONER,

VS.

JOSEPH P. KENNEDY, JAMES M. LANDIS, GEORGE C. MATHEWS AND ROBERT E. HEALY, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

and

BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

J. Edward Jones prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered in this cause on March 17, 1941.

QUESTIONS PRESENTED.

1. Are officers of the government of the United States protected by the immunity of their office when they enter into a conspiracy to destroy the business of a citizen of the United States?

2. Can officers and employees of the United States claim immunity from suit when they go wholly beyond the scope of their governmental authority in harassing and persecuting a citizen of the United States and are guilty of slander and libel against the same citizen and make false charges before a branch of the government and present false evidence—which they know to be false—to obtain a criminal indictment?

3. Can officers and employees of the United States enter into a conspiracy to deny to a citizen of the United States the exercise of his civil rights and then escape the consequences of their acts by claiming the immunity of their governmental duties?

4. The right of attorneys in the employ of the United States to represent officers and employees of the government when they are sued in their personal and private capacities.

STATEMENT OF THE CASE.

Petitioner, J. Edward Jones, has, for many years, been engaged in the oil business and has maintained offices at 342 Madison Avenue, New York City. His business has been chiefly concerned with the buying and selling interests in crude oil producing properties. In his business he retained a research staff engaged in studies of petroleum economics and the problems of the petroleum industry, in the course of which he espoused the cause of the so-called "independents" of the industry in

their controversy with major petroleum organizations and in the efforts of the "independents" to enlighten public policy with regard to the facts and conditions relating thereto.

In March, 1933, the American public was advised of a change in the governmental policy toward industry involving a "New Deal" that implied the adoption of principles for the protection of individuals (so-called "forgotten men") situated in industry similar to the position of that occupied by "independents" of the petroleum industry. Consequently one of the first acts of the new administration was to call a "Governors' Oil Conference" to meet in Washington. The conference was called by Harold L. Ickes, Secretary of the Interior, who stated in his invitation to the governors the announced purpose of said conference as one for "solving the problems" of the petroleum industry. The invitation stated that the principle problem to be "grappled with" was "one of overproduction" of crude oil in this country.

Petitioner went to Washington to attend such oil conference and had occasion to meet the Secretary of the Interior. Petitioner was astonished to find that the Secretary of Interior was using erroneous statistics relating to the relationship of supply and demand and the petitioner respectfully pointed out to Mr. Ickes facts and true figures respecting the relationship of supply and demand of crude oil and informed the Secretary of the Interior of the statistical position of the petroleum industry with regard thereto.

Petitioner who has always been the champion of the independents in the petroleum industry also discovered that either by accident or design the invitation of the Secretary of the Interior to the oil conference was not sent to the governors of certain oil-producing states and since it would not be a representative meeting petitioner made a personal appeal to the governors of those oil-producing states, who had not been invited, to make an ap-

peal to the Secretary of the Interior for representation at the said Governors' Oil Conference.

After the petitioner had brought about the enlargement of the oil conference the Secretary of the Interior true to form resented the interest of the petitioner in an effort to make it a representative meeting and it was this resentment of Mr. Ickes that laid the foundation for the conspiracy to destroy the petitioner and to ruin his business. When the petitioner found that the Secretary of the Interior was not honest and sincere in his effort to stabilize the oil business he deemed it his duty as an American citizen to make his views known to the Congress of the United States and he thereupon appeared before various committees of the House of Representatives and the Senate of the United States to oppose legislation sponsored by the Secretary of the Interior and a memorial was presented to every member of the Congress regarding the problems of the petroleum industry. A copy of such memorial was made a part of the proceedings in the court below.

Soon after the memorial in question was presented to members of the Congress the Secretary of the Interior delivered a public address in Dallas, Texas, and condemned severely the policies of our leading petroleum industries and threatened nationalization of the American petroleum industry as a public utility. Petitioner saw in this move by the Secretary of the Interior a real threat to the fundamental principle of the American system of government and sensing the danger that confronted the industry if Mr. Ickes was not checked addressed a communication to the President of the United States calling upon the President to remove Mr. Ickes from his office as Administrator for the Code of Fair Competition for the Petroleum Industry, which office Mr. Ickes held by appointment of the President by virtue of the authority vested in the President by the National Industrial Recovery Act (now defunct). A copy of the letter sent to the

President by the petitioner was made a part of the records in the court below.

It seems useless to relate that Mr. Ickes was angered at the request of the petitioner and the newspaper publicity attendant thereon and there was then set in motion a conspiracy against the petitioner that surpasses anything this country has seen, when the identity of the conspirators is taken into consideration. The many acts and unlawful practices indulged in by the conspirators seem almost beyond the realm of belief and so far beyond the scope of their official duties did they go that the allegations of the petitioner would be regarded as a product of the imagination if we did not have actual facts and *bona fide* evidence to support every allegation made by the petitioner.

In the course of petitioner's business he caused to be filed with the Securities and Exchange Commission a registration statement for an investment trust. The registration statement was in proper form and in accordance with law. The filing of the registration statement by the petitioner gave the conspirators the vehicle they had sought to destroy the petitioner. Since the members of the Securities and Exchange Commission were appointees of the same president as Secretary Ickes the petitioner alleges that the respondents agreed to make allegations that the registration statement submitted by the petitioner was affirmatively and negatively deficient and was not in compliance with law. Although the registration statement was in compliance with law the respondents released and caused to be released to the press false statements which were known by the respondents to be false—said statements reflecting upon the business activities of the petitioner and the respondents further issued statements to the effect that the registration submitted by the petitioner was not in compliance with law when the respondents well knew that said registration statement met every requirement of the statutes.

Petitioner further alleged that, although respondents well knew that the registration statement was in full compliance with law and that no issue had been adjudicated between the Securities and Exchange Commission and the petitioner, the respondents caused to be released to the newspaper statements to the effect that the registration statement was deficient and that the commission would proceed with so-called "stop order" proceedings. Of course, it is plain to see that this activity was very detrimental to the business of the petitioner in as much as such newspaper releases carried with them the blessing and approval of an agency of the United States.

Petitioner was summoned before the Securities and Exchange Commission for a hearing and the respondents designated a member of their own staff to preside over such hearing. Of course, such employe could not act impartially. At this hearing petitioner was subjected to questioning upon matters not pertinent to the issues involved and it was soon apparent that the method of procedure was a part of the conspiracy entered into by the respondents in that among other things respondents obtained the names of petitioner's clients and then sought to harass and annoy said clients and to induce said clients to cease business dealings with petitioner.

After petitioner realized that the proceedings before the Securities and Exchange Commission were not in good faith he tendered to the commission a complete and unequivocal withdrawal of his registration statement (Record 71) and did thereupon terminate the authority and jurisdiction of the Securities and Exchange Commission. However, to the great surprise of the petitioner the commission refused to accept such withdrawal and proceeded with its hearing and thereupon petitioner to protect his rights appealed to the courts.

It must never be forgotten that this court in a notable and far-reaching opinion supported the contentions of petitioner and severely rebuked the respondents (Record

72). See *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1.

The respondents were not content with the castigation meted out by this court and, smarting under the rebuke given them, carried the conspiracy further and by means of false testimony which they knew to be false succeeded in bringing a criminal indictment against petitioner in the Federal Court for the Southern District of New York (Record 68) and after repeated dilatory tactics on the part of the government petitioner was finally able to obtain a trial on the criminal charge and the falsity of the government charges was clearly established when the jury exonerated petitioner (Record 68).

After his acquittal by a jury petitioner believed that democracy would be in peril if such activities were not checked at the source and thereupon prepared for publication a book entitled, "And So They Indicted Me," but respondents, through their agents, visited various publishers and told them if they agreed to publish petitioner's book they would face reprisals from various officials in Washington and publishers were thereupon intimidated and threatened and petitioner's civil rights were therefore interfered with. It was necessary therefore for petitioner to arrange himself for the publishing of said book and this entailed much time and expense on his part, which would have been avoided if respondents had not interfered with his civil rights.

Petitioner filed suit in the District Court of the United States for the District of Columbia for $1,000,000 against Joseph P. Kennedy, James M. Landis, George C. Mathews and Robert E. Healy. Respondents filed a motion to dismiss on the ground that the acts alleged in the complaint (Record 1 to 8) were within the scope of the authority of respondents and hence they were immune from suit (Record 9 to 14). After argument the declaration was dismissed with leave to amend.

An amended complaint was filed (new rules now being effective) and with leave of the court there was joined in the complaint John J. Burns, general counsel for the Securities and Exchange Commission, John L. Flynn, a member of the legal staff of the commission, Wm. H. Rabell, a member of the commission's accounting staff. The defendants, Burns, Flynn and Rabell, evaded service of process and they have not yet been served. The amended complaint (Record 15 to 44) went into more elaborate detail as to various phases of the conspiracy. This was done to take the complaint out of the rule laid down by this court in *Spalding* v. *Vilas*, 161 U. S. 483. Respondents filed another motion to dismiss on the ground that they were immune from suit (Record 51, 52). After argument the complaint was dismissed with leave to amend.

A second amended complaint was filed (Record 53 to 73). The second amended complaint alleged among other things the following specific acts to show that the respondents went far beyond the scope of their authority:

> 1—Respondents unlawfully seized papers, books and records of petitioner and without permission of petitioner removed the books, papers and records from the offices of petitioner and made a list of petitioner's clientele and turned over to competitors of petitioner a list of his customers and called upon said customers and intimidated and threatened said customers and asked said customers to cease business dealings with petitioner (Record 58 and 59).
>
> 2—Respondents, through their agents, caused the customers of petitioner to appear before agents of respondents with extraordinary swiftness and to bring with them all papers and correspondence had with petitioner and said customers were handed statements prepared by respondents' agents—these statements containing false allegations and which were known by respondents to be false—and said customers were thereupon induced to sign such false statements (Record 60).

3—At a hearing ordered by respondents false evidence—and known by respondents to be false—was offered against petitioner and petitioner was denied opportunity to offer matters of refutation and was not given an opportunity to offer testimony in his own behalf, and had petitioner been given such opportunity he would have been able to rebut and contradict and thoroughly disprove all such false allegations (Record 61).

4—The defendant, John L. Flynn, threatened an employee of petitioner with bodily harm if such employee testified on behalf of petitioner (Record 61).

5—The defendant, John L. Flynn, entered uninvited a private conference of petitioner held at the Biltmore Hotel in New York and was in a state of almost total intoxication and proceeded to gloat over the apparent success of conspiracy entered into against petitioner and proceeded to relate the details of the unlawful conspiracy and the part each conspirator was to play and the said Flynn then proceeded to order various drinks of intoxicating liquor, without permission of petitioner, and proceeded to charge same to the petitioner and while in a state of intoxication physically assaulted a member of petitioner's staff (Record 62).

6—The defendant Burns wrote a letter over his official signature addressed to a client of petitioner saying in part "It is my advice that you take immediate steps to get your money back from Jones" (Record 63). At this time no issue had been adjudicated between petitioner and the Securities and Exchange Commission.

7—Defendant Kennedy at a social evening with a lady client of petitioner's stated to her that the respondents had "closed" the offices of petitioner and that petitioner "was not allowed to sell oil royalties any more" (Record 63). These allegations were false and known by Kennedy to be false.

8—Defendant Rabell approached petitioner and offered to reveal to petitioner the full details of the conspiracy for the sum of $27,500 (Record 64). The defendant Rabell did reveal to petitioner certain details of the conspiracy and petitioner discoursed with

said Rabell for the sole and only purpose of determining the full workings of the conspiracy and acting under advice of counsel arranged for the said Rabell to visit petitioner at his home in Scarsdale, New York, and defendant did then and there accept marked money as payment on account of his $27,500 demand and the said defendant Rabell upon orders and instructions of petitioner was arrested by officers of the law as he attempted to flee with the money (Record 64).

9—Within a few minutes after the arrest of defendant Rabell the defendant Burns was found concealed on the premises of petitioner at Scarsdale, New York, and running toward counsel of petitioner breathless and coatless said "how far am I involved in this Fischbach" (Record 64).

10—The defendant Landis made a statement to the effect that defendants did not "have anything on Jones but we are going to get that guy" (Record 66).

11—The respondents through their agents threatened and intimidated and interfered with the civil rights of petitioner when he sought to publish his book "And So They Indicted Me" (Record 69).

A motion to strike was filed by the respondents (Record 74 and 75) and after argument it was granted. The district court gave petitioner the right to amend again but petitioner elected to stand upon his second amended complaint and thereupon appealed to the United States Court of Appeals for the District of Columbia. That court affirmed the judgment of the district court (Record 90). A petition for rehearing was denied on April 26, 1941 (Record 90).

A second point involved in this petition is the right of government counsel to appear on behalf of respondents who are sued in their private capacities. It is our contention that in the absence of specific statutory authority permitting representation by government counsel that the respondents would have to engage private counsel. The district court ruled against our contention and its action was upheld by the court of appeals.

REASONS FOR GRANTING THE WRIT.

1—The United States Court of Appeals for the District of Columbia has not given proper effect to the opinion of this court in *Spalding* v. *Vilas*, 161 U. S. 483.

2—It is necessary for this court to again inquire into and re-examine the scope of immunity given officers of the government and to what extent they are protected by the authority of their offices when they go far beyond the duty vested in them by law.

3—The United States Court of Appeals for the District of Columbia seems to be undecided and in doubt as to the scope of governmental immunity when the opinion of this case is considered with the opinion of that same court in *Glass* v. *Ickes* decided by that court on August 26, 1940, and *Colpoys* v. *Gates* decided by that court on January 27, 1941.

4—This court has stated in *Spalding* v. *Vilas*, 161 U. S. 483, that officers of the government are not immune from suit if the acts done "were palpably or manifestly beyond the scope of their official duties." The court below therefore ignored the plain mandate of this court.

5—The United States Court of Appeals for the District of Columbia did not give proper effect to the opinion of this court in *Robertson* v. *Sichel*, 127 U. S. 507.

6—The United States Court of Appeals for the District of Columbia was in error in holding that members of the legal staff of the United States Government could appear for respondents when they are sued in their private capacities.

CONCLUSION.

Wherefore your petitioner prays that this petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia be granted.

Respectfully submitted,

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